

Securities and Exchange Commission

§ 270.17a-6

§ 270.17a-2 Exemption of certain purchase, sale, or borrowing transactions.

Purchase, sale or borrowing transactions occurring in the usual course of business between affiliated persons of registered investment companies shall be exempt from section 17(a) of the Act provided (a) the transactions involve notes, drafts, time payment contracts, bills of exchange, acceptance or other property of a commercial character rather than of an investment character; (b) the buyer or lender is a bank; and (c) the seller or borrower is a bank or is engaged principally in the business of installment financing.

[Rule N-17A-2, 12 FR 5008, July 29, 1947]

§ 270.17a-3 Exemption of transactions with fully owned subsidiaries.

(a) The following transactions shall be exempt from section 17(a) of the Act:

(1) Transactions solely between a registered investment company and one or more of its fully owned subsidiaries or solely between two or more fully owned subsidiaries of such company.

(2) Transactions solely between any subsidiary of a registered investment company and one or more fully owned subsidiaries of such subsidiary or solely between two or more fully owned subsidiaries of such subsidiary.

(b) The term *fully owned subsidiary* as used in this section, means a subsidiary (1) all of whose outstanding securities, other than directors' qualifying shares, are owned by its parent and/or the parent's other fully owned subsidiaries, and (2) which is not indebted to any person other than its parent and/or the parent's other fully owned subsidiaries in an amount which is material in relation to the particular subsidiary, excepting (i) indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not, and (ii) any other indebtedness to one or more banks or insurance companies.

[Rule N-17A-3, 12 FR 3442, May 28, 1947]

§ 270.17a-4 Exemption of transactions pursuant to certain contracts.

Transactions pursuant to a contract shall be exempt from section 17(a) of the Act if at the time of the making of the contract and for a period of at least six months prior thereto no affiliation or other relationship existed which would operate to make such contract or the subsequent performance thereof subject to the provisions of said section 17(a).

[Rule N-17A-4, 12 FR 5008, July 29, 1947]

§ 270.17a-5 Pro rata distribution neither "sale" nor "purchase."

When a company makes a pro rata distribution in cash or in kind among its common stockholders without giving any election to any stockholder as to the specific assets which such stockholders shall receive, such distribution shall not be deemed to involve a sale to or a purchase from such distributing company as those terms are used in section 17(a) of the Act.

[20 FR 7447, Oct. 6, 1955]

§ 270.17a-6 Exemption of transactions with certain affiliated persons.

(a) A transaction to which a registered investment company, or a company controlled by such a registered investment company, is a party, and to which a company affiliated with such a registered investment company or a person affiliated with such affiliated company is also a party, shall be exempt from the provisions of section 17(a) of the Act, if no person who is:

(1) An officer, director, employee, investment adviser, member of an advisory board, depositor, promoter of or principal underwriter for the registered investment company, or

(2) A person directly or indirectly controlling the registered investment company, or

(3) A person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of the registered investment company, or

(4) A person directly or indirectly under common control with the registered investment company, or

(5) An affiliated person of any of the foregoing,

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(i) Is also a party to the transaction, or

(ii) Has, or within six months prior to the transaction had, or pursuant to an arrangement will acquire, a direct or indirect financial interest in a party (except the registered investment company) to the transactions.

(b) For the purpose of determining the availability of the exemption provided for by this section:

(1) The term “financial interest” as used in paragraph (a) of this section shall not include (i) any interest through ownership of securities issued by the registered investment company; (ii) any interest of a wholly-owned subsidiary of a registered investment company; (iii) usual and ordinary fees for services as a director; (iv) an interest of a non-executive employee; (v) an interest of an insurance company arising from a loan or policy made or issued by it in the ordinary course of business to a natural person; (vi) an interest of a bank arising from a loan or account made or maintained by it in the ordinary course of business to or with a natural person, unless it arises from a loan to a person who is an officer, director or executive of a company which is a party to the transaction, or from a loan to a person who directly or indirectly owns, controls, or holds with power to vote, 5 per centum or more of the outstanding voting securities of a company which is a party to the transaction; or (vii) an interest acquired in a transaction described in paragraph (d)(3) of § 270.17d-1 (Rule 17d-1 under the Act).

(2) Paragraph (a)(4) of this section shall not include a person who, if it were not directly or indirectly controlled by the registered investment company, would not be directly or indirectly under the control of a person who controls the registered investment company.

(3) Paragraph (a)(5) of this section shall not include (i) the registered investment company, or (ii) a person who (a) if it were not directly or indirectly controlled by the registered investment company, or (b) if 5 per centum or more of its outstanding voting securities were not directly or indirectly owned, controlled, or held with power to vote by the registered investment

company, would not be an affiliated person of a person described in paragraph (a)(2) or (3) of this section.

(Sec. 6, 54 Stat. 800; 15 U.S.C. 80a-6)

[29 FR 6154, May 9, 1964, as amended at 44 FR 48658, Aug. 20, 1979]

§ 270.17a-7 Exemption of certain purchase or sale transactions between an investment company and certain affiliated persons thereof.

A purchase or sale transaction between registered investment companies or separate series of registered investment companies, which are affiliated persons, or affiliated persons of affiliated persons, of each other, between separate series of a registered investment company, or between a registered investment company or a separate series of a registered investment company and a person which is an affiliated person of such registered investment company (or affiliated person of such person) solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers, is exempt from section 17(a) of the Act; *Provided, That:*

(a) The transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available;

(b) The transaction is effected at the independent current market price of the security. For purposes of this paragraph the “current market price” shall be:

(1) If the security is a “reported security” as that term is defined in rule 11Aa3-1 under the Securities Exchange Act of 1934 [17 CFR 240.11Aa3-1], the last sale price with respect to such security reported in the consolidated transaction reporting system (“consolidated system”) or the average of the highest current independent bid and lowest current independent offer for such security (reported pursuant to rule 11Ac1-1 under the Securities Exchange Act of 1934 [17 CFR 240.11Ac1-1]) if there are no reported transactions in the consolidated system that day; or

(2) If the security is not a reported security, and the principal market for such security is an exchange, then the